

Tentative Rulings for October 6, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

15CECG03597 *Andrea Golden v. Maria Rodriguez Fernandez, Deceased* (Dept. 502)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

11CECG04276 *United Hmong Council, Inc. v. Hmong International New Year Foundation, Inc., et al.* is continued to Thursday, October 13, 2016, at 3:30 in Dept. 402.

13CECG02711 *Harpains Meadow, L.P. v. Stockbridge*, Motion for Judgment on the Pleadings is continued to Tuesday, October 25, 2016, at 3:30 p.m. in Dept. 501. [See Tentative Ruling on Motion to Amend, *infra*.]

16CECG01445 *Gerica Ramos v. Saint Agnes Medical Center* is continued to Thursday, October 20, 2016, at 3:30 p.m. in Dept. 501.

16CECG00653 *State of California v. Lamoure's Incorporated* is continued to Wednesday, October 12, 2016, at 3:30 p.m. in Dept. 501.

16CECG00791 *Riddle v. Community Medical Centers* is continued to Thursday, October 13, 2016, at 3:30 p.m. in Dept. 403.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(28)

Tentative Ruling

Re: ***Jackson v. The McCaffery Group, Inc., et al.***

Case No. 13CECG01676

Hearing Date: October 6, 2016 (Dept. 402)

Motion: By Plaintiff to Vacate Dismissal.

Tentative Ruling:

To deny the motion without prejudice unless Plaintiffs can provide a proof of timely service for the motion at the hearing.

Explanation:

Plaintiffs have filed a Motion to set aside the judgment pursuant to Code of Civil Procedure section 473, subdivision (b). Plaintiffs have sought relief under both the "discretionary" and "mandatory" provisions of the section, including filing an attorney affidavit of fault.

However, no proof of service for the motion appears in the Court's files, therefore, the Court cannot consider the motion unless and until Plaintiffs provide a valid proof of timely service. (*Cf. Dobrick v. Hathaway* (1984) 160 Cal.App.3d 913, 921-22 (failure to comply with service requirements deprives Court of jurisdiction to hear matter).)

Therefore, unless such proof of service is provided at the hearing on this motion, the Court will deny the motion.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 10/05/16
(Judge's initials) (Date)

Tentative Rulings for Department 403

(20)

Tentative Ruling

Re: **Marcum v. St. Agnes Medical Center et al.**, Superior Court
Case No. 15CECG01327

Hearing Date: **October 6, 2016 (Dept. 403)**

Motion: Herbert Thomas, Wayne Thomas and Sharon Wimberley's
Motion to Strike Third Amended Complaint

Tentative Ruling:

To take off calendar. The motion is moot because the court already granted the relief requested by order dated September 26, 2016.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KCK on 10/03/16
(Judge's initials) (Date)

Tentative Ruling

Re: ***Anderson v. Palm Village Retirement Community***
Case No. 15 CE CG 01462

Hearing Date: October 6th, 2016 (Dept. 403)

Motion: Defendant Agnes Jaymalin's Motion to Strike Portions of First Amended Complaint

Tentative Ruling:

To grant defendant's motion to strike portions of the first amended complaint, without leave to amend. (Code Civ. Proc. § 435, 436.) Specifically, the prayers for injunctive relief, treble damages under Civil Code section 3345, and attorney's fees under Code of Civil Procedure section 1021.5 will be stricken from the first amended complaint as improperly alleged.

Explanation:

With regard to the prayer for attorney's fees under Code of Civil Procedure section 1021.5, plaintiffs have not alleged any facts that would tend to show that they are entitled to fees for litigating a matter in the public interest. Under section 102.15,

Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. (Code Civ. Proc., § 1021.5.)

"Entitlement to fees under section 1021.5 requires a showing that the litigation: '(1) served to vindicate an important public right; (2) conferred a significant benefit on the general public or a large class of persons; and (3) imposed a financial burden on plaintiffs which was out of proportion to their individual stake in the matter.' [Citation.]" (*California Licensed Foresters Assn. v. State Bd. of Forestry* (1994) 30 Cal.App.4th 562, 568-569.)

Here, the plaintiffs' action does not appear to promote any significant benefit to the general public or a large class of person, nor are plaintiffs seeking to vindicate an important public right. The plaintiffs appear to be primarily litigating to promote their own personal interests, rather than conveying a benefit to the public. Also, plaintiffs will be able to recover attorney's fees under the Elder Abuse Act if they are successful, so there is no need to provide attorney's fees under section 1021.5 as well. Plaintiffs have

not filed opposition or made any effort to show that they are promoting a public interest in their action, or that they would not be adequately compensated under the Elder Abuse Act. Therefore, the court intends to grant the motion to strike the prayer for attorney's fees under section 1021.5, without leave to amend.

The prayer for injunctive relief is also unsupported by the allegations of the first amended complaint. In order to obtain an injunction, the plaintiffs must show, among other things, that they will suffer irreparable harm if the injunction is not granted, and that money damages will not adequately compensate them for the harm. (Code Civ. Proc. § 526, subd. (a).) Here, plaintiffs' decedent no longer resides at defendant's facility, and in fact she passed away shortly after leaving the facility. While plaintiffs are entitled to money damages if they prevail on their claims, it does not appear that there is any reason for the court to grant injunctive relief under the facts alleged in the FAC. Nor have plaintiffs filed opposition or shown any way that they could be entitled to injunctive relief here. Therefore, the court intends to strike the prayer for injunctive relief from the FAC, without leave to amend.

Finally, plaintiffs have not alleged any facts showing that they are entitled to treble damages under Civil Code section 3345. Section 3345 provides, in pertinent part,

Whenever a trier of fact is authorized by a statute to impose either a fine, or a civil penalty or other penalty, or any other remedy the purpose or effect of which is to punish or deter, and the amount of the fine, penalty, or other remedy is subject to the trier of fact's discretion, the trier of fact shall consider all of the following factors, in addition to other appropriate factors, in determining the amount of fine, civil penalty or other penalty, or other remedy to impose. Whenever the trier of fact makes an affirmative finding in regard to one or more of the following factors, it may impose a fine, civil penalty or other penalty, or other remedy in an amount up to three times greater than authorized by the statute, or, where the statute does not authorize a specific amount, up to three times greater than the amount the trier of fact would impose in the absence of that affirmative finding:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or

economic damage resulting from the defendant's conduct. (Civ. Code, § 3345, subd. (b).)

Thus, section 3345 applies to unfair business practices that cause primarily economic loss to elderly or disabled persons. "Succinctly stated, Section 3345 may be applied to statutory claims, which provide for the requisite remedy described in Section 3345(b), that are alleged in conjunction with an underlying cause of action involving 'unfair practices.'" (*Hood v. Hartford Life and Acc. Ins. Co.* (E.D. Cal. 2008) 567 F.Supp.2d 1221, 1229.)

There do not appear to be any published cases on the issue of whether a plaintiff can recover treble damages in an elder abuse case based on section 3345 where the elder did not suffer any economic harm. Nevertheless, since section 3345 is primarily directed at unfair business practices against elders and disabled persons that cause such persons economic harm, as opposed to physical injury, and since plaintiffs are alleging that their decedent suffered physical injuries due to defendant's actions, it does not appear that section 3345 would apply here. The plaintiffs have not made any attempt to argue that section 3345 does apply to the facts alleged in the FAC, so it appears that they concede that section 3345 is inapplicable. Consequently, the court intends to grant the motion to strike the prayer for treble damages under section 3345, without leave to amend.

Pursuant to CRC 3.1312 and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KCK **on** 10/03/16
 (Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***Kristina Lout and David Ouk v. Mercury Insurance et al.***

Superior Court Case No. 16 CECG 02141

Hearing Date: October 6, 2016 **(Dept. 403)**

Motions: (1) Transfer Venue;
(2) Demurrer and strike First Amended Complaint; and
(3) Reclassify as Limited Civil

Tentative Ruling:

To grant the motion of Robert Weiss dba Action Construction and transfer the action on the grounds that the Plaintiffs filed the lawsuit in "the wrong court". See CCP § 395(a). The lawsuit will be transferred to Alameda County. The Plaintiff is responsible for paying the transfer fee within 30 days of notice of the ruling. See CCP § 399(a). The demurrer and remaining motions cannot be addressed by this Court.

Explanation:

Background

On June 28, 2016, Plaintiffs, residents of Fresno, CA and representing themselves, jointly filed a complaint for general negligence and motor vehicle negligence stemming from a two vehicle collision that occurred on I-580 on July 6, 2014 in the City of Livermore, Alameda County. On July 15, 2016, they filed a First Amended Complaint.

On August 25, 2016, Defendants Mercury Insurance and Robert Weiss dba Action Construction filed a demurrer, motion to strike, and motion to reclassify as limited civil. Defendant Robert Weiss dba Action Construction filed a motion seeking a change of venue to Alameda County or San Joaquin County. The Plaintiffs filed opposition to the demurrer and motion to strike but not to the motion seeking a change of venue.

Transfer on Grounds of "Improper Court" in General

The grounds upon which a court may order transfer are entirely statutory. Therefore, the notice of motion must be based on one or more of these grounds [CCP § 397]. As the moving party, defendant must overcome the presumption that plaintiff has selected a proper venue: "(l)it is the moving defendant's burden to demonstrate that the plaintiff's venue selection is not proper under any of the statutory grounds." [Fontaine v. Sup.Ct. (Cashcall, Inc.) (2009) 175 CA4th 830, 836, 96 CR3d 607, 611 (emphasis added)]

The action at bench is an action for injury to a person or personal property or for wrongful death. It must be tried in the superior court in the county where the injury or

death occurred or where any defendant resides at the commencement of the action. CCP §395(a); *Paesano v Superior Court* (1988) 204 Cal.App.3d 17, 20. Here, the Defendant has met his burden of proof. See Declaration of Mulder, counsel for the Defendant. He states that his client resides in Ripon, CA in the County of San Joaquin and lived in that County at the time of the accident. *Id.* at ¶3. See also the Traffic Report attached as Exhibit A to the Declaration of Mulder. However, counsel requests that the action be transferred to Alameda County, the location of the accident. The motion will be granted.

But, this Court cannot address the remaining demurrer, motion to strike and motion to reclassify. The timely filing of a motion for change of venue on the ground that the action has been brought in the wrong court **suspends** the court's power to take any action in the case **other than** hearing and deciding the venue motion. [*Pickwick Stages System v. Superior Court* (1934) 138 Cal.App. 448, 449, 32 P.2d 433; *Tarman v. Sherwin* (1961) 189 Cal.App.2d 49; and *Moore v. Powell* (1977) 70 Cal.App.3d 583, 587]

Plaintiff is Responsible for Fees

If transfer is ordered on the ground that plaintiff filed in the “wrong court,” plaintiff is responsible for paying the costs and fees of transferring the action to whichever county the court orders, within 30 days after service of notice of the transfer order. If plaintiff fails to do so *within 5 days* after service of notice of the order, any other interested party, whether named in the complaint or not, may pay such costs and fees in order to expedite the transfer. (If the fees and costs are not paid within 30 days, the action is subject to dismissal.) [CCP § 399(a); see *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1037—case properly dismissed where transfer costs not paid within 30 days after plaintiff was served with notice of transfer order]

In the case at bench, the Plaintiff filed the action “in the wrong court” and therefore is ordered to pay the costs and fees of transferring the action to Alameda County within 30 days after service of notice of the transfer order. See CCP § 399(a).

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KCK on 10/05/16
 (Judge's initials) (Date)

Tentative Rulings for Department 501

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Tentative Ruling

Re: ***The People of the State of California, Department of Transportation v. Nineda, LP et al.***
Superior Court Case No. 16CECG01473

Hearing Date: October 6, 2016 (Dept. 501)

Motion: Defendants Nineda LP and Derrel's Mini Storage, Inc.'s application for withdrawal of deposit

Tentative Ruling:

To grant defendants Nineda LP and Derrel's Mini Storage Inc.'s application for withdrawal of probable compensation. The proposed order submitted to this court with an Odyssey entry of August 23, 2016 but receive stamped August 24, 2016 shall be signed.

Explanation:

As a preliminary note the court is unsure why the moving party set this matter for a hearing. The application for withdrawal is a proper application under CCP §1255.210. The plaintiff has not filed an objection pursuant to CCP §1255.230. There has been no timely objection and court shall to order the amount requested in the application to be paid to the applicant unless there is a timely objection. See CCP §1255.210.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 10/05/16
 (Judge's initials) (Date)

(24)

Tentative Ruling

Re: **Patel v. Meeks**
Court Case No. 14CECG02854

and

Budwal v. Farmers Insurance Exchange
Court Case No. 16CECG02613

Hearing Date: **October 6, 2016 (Dept. 501)**

Motion: Motion of Plaintiff Joga Budwal to Consolidate Plaintiff's
Underinsured Motorist Arbitration with Case #14CECG02854

Tentative Ruling:

To continue to Thursday, October 27, 2016, at 3:30 p.m., in order to allow moving party to address the issues of notice to co-plaintiff Piyush B. Patel, and to allow moving party to supply the court with a copy of the arbitration agreement in question.

Explanation:

A motion must be served on all parties who have appeared in the action, even parties not directly affected by the motion, such as co-plaintiff Patel. (See Code Civ. Proc. § 1014; see Cal. Prac. Guide Civ. Pro. Before Trial Ch. 9(I)-B, § 9:82.5—noting that although section 1014 applies to defendants, “by analogy, most court most courts apply a similar rule to other parties.”)

As to the merits of the motion, *Mercury Ins. Group v. Superior Court* (1998) 19 Cal.4th 332 (“*Mercury*”) does provide support for the type of “consolidation” plaintiff requests, even though this is not the standard type of consolidation. The instant case is not on all fours with *Mercury*: 1) in *Mercury* an arbitration proceeding had actually commenced regarding the uninsured motorist (“UIM”) claim, and here it has not; 2) in *Mercury* the insurance company had moved to compel arbitration, whereas here it has not; and 3) in *Mercury* the UIM claim concerned the same accident at issue in the lawsuit, and here the UIM claim concerns the case which has now been dismissed (Case #15CECG00045, or the “Ferguson Action”).

However, it appears the question addressed by the California Supreme Court in *Mercury* is the same one at issue on this motion:

Does a trial court have authority to “consolidate” a contractual arbitration proceeding between an insurer and an insured as to uninsured motorist coverage in the insured's pending action against third parties – strictly speaking, does it have authority to join the insurer as a defendant as to uninsured motorist coverage issues – for all

purposes, including trial, in order to avoid conflicting rulings on a common issue of law or fact?

(*Mercury*, *supra*, 19 Cal.4th at p. 337.)

As to the first distinction noted above, it is not clear that the Court in *Mercury* was limiting its ruling to the procedural posture of that case, such that the actual commencement of the arbitration is required before the issue of "consolidation" is ripe. In that case, plaintiffs initially demanded contractual arbitration and then after it had commenced move to consolidate that arbitration with the UIM issues in the pending court case. (*Mercury* at p. 338.) It would seem little would be gained by requiring plaintiff to go through that step before filing this motion.

As to the second distinction, the same observation can be made. In *Mercury*, after the court had consolidated by granting plaintiffs' initial motion, and after the trial court had ordered the parties to non-binding judicial arbitration, the insurance company moved for separate judicial arbitration and contractual arbitration. (*Mercury* at pp. 338-339 and 349 [finding that the insurer's motion in effect was a motion to compel contractual arbitration].) On this motion plaintiff has provided uncontroverted evidence that counsel asked the insurer to stipulate to consolidation but it declined and said it agreed to contractual arbitration, which indicates it has asserted its contractual right to arbitration.

As to the third distinction (that the UIM claim is not regarding the same accident), this also does not appear to put it outside the parameters of *Mercury*. The Court relied on the provisions of Code of Civil Procedure 1281.2, subdivision (c) as being "crucial" to its analysis (at p. 342), which provides that where one party to an arbitration agreement seeks to compel arbitration the court may decline to compel if it determines that a "party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Code Civ. Proc. § 1281.2, subd. (c), emphasis added.) While the Court in *Mercury* focused on the phrase "same transaction," here the operative phrase is "series of related transactions."

Thus, the court concludes that *Mercury* applies, and the court has authority to join the insurer as a defendant to the Meeks Action (Case #14CECG02854) as to UIM coverage issues (regarding the Ferguson accident), for all purposes, including trial, in order to avoid conflicting rulings on a common issue of law or fact. (*Mercury* at p. 345.)

However, the court cannot make such a finding without more evidence: plaintiff must submit a copy of the arbitration agreement at issue. The required finding in Code of Civil Procedure section 1281.2 also depends on the court finding that there is a valid arbitration agreement: "the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists." (*Id.*, emphasis added.) Furthermore, section 1281.2 will not apply (i.e., will be preempted) if the agreement is governed by Federal Arbitration Act ("FAA"), as the United States Supreme Court has clearly ruled that under the FAA courts must compel arbitration of arbitrable claims even though nonarbitrable claims remain to be tried in

court and result is inefficient maintenance of separate proceedings in different forums. (See *KPMG LLP v. Cocchi* (2011) 132 S.Ct. 23, 26; *Rodriguez v. American Technologies, Inc.* (2006) 136 Cal.App.4th 1110, 1114.) The court cannot determine this without seeing the agreement in question.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 10/05/16
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Harpains Meadow, L.P. v. Stockbridge***
Court Case No. 13CECG02711

Hearing Date: **October 6, 2016 (Dept. 501)**

Motion: Plaintiffs' Motion for Leave to File Second Amended Complaint

Tentative Ruling:

To grant, with plaintiffs granted 10 days' leave to file the Second Amended Complaint. The time in which the complaint can be amended will run from service by the clerk of the minute order. All new allegations are to be set in **boldface** type.

Explanation:

Motions for leave to amend the pleadings are directed to the sound discretion of the judge. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading . . ." (Code Civ. Proc. § 473, subd. (a)(1); see also Code Civ. Proc. § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion as to allowing amendments will usually be exercised in favor of permitting amendments. This policy is so strong, that denial of a request to amend is rarely justified, particularly where, as here, "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

Plaintiffs have given proper notice of this motion, and no opposition has been filed. Plaintiffs have included the proposed Second Amended Complaint with its motion. The request to amend is proper.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 10/05/16
 (Judge's initials) (Date)

Tentative Rulings for Department 502

(29)

Tentative Ruling

Re: ***Bronson Anyadiegwu v. Herbert Mattos, Jr.; Marilyn Mattos; Does 1 to 10***
Superior Court Case No. 16CECG00287

Hearing Date: October 6, 2016 (Dept. 502)

Motion: Compel responses to discovery; sanctions

Tentative Ruling:

To grant Defendants' motion to compel Plaintiff to provide initial verified responses to Plaintiff's form interrogatories, set one; special interrogatories, set one; and demand for identification and inspection of documents, set one. (Code Civ. Proc. §§ 2030.290(b), 2031.300(b).) Plaintiff is ordered to serve complete verified responses to all discovery set forth above, without objection, within 10 days of the clerk's service of the minute order.

To impose monetary sanctions in favor of Defendants, against Plaintiff and Plaintiff's counsel, jointly and severally. (Code Civ. Proc. §§ 2023.010(d), (i); 2023.030(a); 2030.290(c); 2031.300(c).) Plaintiff and Plaintiff's counsel are ordered, jointly and severally, to pay \$306 in sanctions to the law offices of Austin, Brownwood, Cannon & Santa Cruz within 30 days of service of this order.

Explanation:

The discovery at issue was served on Plaintiff on May 11, 2016. Despite Defendant's multiple efforts to handle the lack of response informally, including extensions of the response deadline, Plaintiff has failed to provide the requested discovery. Accordingly, Defendant's motion to compel is granted. Sanctions in the amount of \$306 are imposed, jointly and severally, against Plaintiff and Plaintiff's attorney of record.

Pursuant to California Rules of Court, rule 3.1312, and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB on 10/05/16
(Judge's initials) (Date)

Tentative Rulings for Department 503

(6)

Tentative Ruling

Re: **Rassamni v. Lepe**
Superior Court Case No.: 15CECG01260

Hearing Date: October 6, 2016 (**Dept. 503**)

Motion: By Defendants Vladimir Syelsky, Steve Matjevich, and Igor Cherkas, to transfer venue to Los Angeles County

Tentative Ruling:

To deny, with Defendants to respond to the complaint 30 days after service of the minute order on them.

Explanation:

"Except as otherwise provided by law and subject to the power of the court to transfer ... the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action." (Code Civ. Proc., § 395, subd. (a); see *Brown v. Superior Court* (1984) 37 Cal.3d 477, 483.)

Venue is determined at the outset of the action from the original complaint. Consequently, venue based on the residence of a bona fide defendant remains proper, even though that defendant is later dismissed from the action. (*Ferguson v. Koerber* (1924) 69 Cal.App.47, 49.)

Here, the original complaint named as defendants Federico Lepe, Ricardo Ramirez, Gloria Ramirez, and David Gabriel, and all were alleged to be residents of the County of Fresno. (Complaint, ¶¶3-6.) Consequently, venue in Fresno County is proper, and the motion must be denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson on 10/05/16
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***Rudy Castro v. Sunset Waste Systems, Inc.***
Superior Court Case No. 16 CECG 01849

Hearing Date: October 6, 2016 **(Dept. 503)**

Motion: Demurrer to original Complaint

Tentative Ruling:

To take the demurrer off calendar. The demurring party did not file a Memorandum of Points and Authorities in support of the demurrer. This is mandatory. See CRC Rule 3.1113(a):

A party filing a motion, except for a motion listed in rule 3.1114, **must serve and file a supporting memorandum.** The court may construe the absence of a memorandum as an admission that the motion or special demurrer is not meritorious and cause for its denial and, in the case of a demurrer, as a waiver of all grounds not supported.

To grant leave to re-file demurrer.

Pursuant to California Rules of Court, rule 391(a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: **A.M. Simpson** on **10/05/16**
 (Judge's initials) (Date)